

Message Text

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AMEMBASSY ROME

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E.O. 11652: GDS

TAGS: CSCE

SUBJECT: CSCE EXPERTS MEETING ON PEACEFUL SETTLEMENT OF
DISPUTES

REF: USNATO A-166 (NOTAL)

1. ASSISTANT SECRETARY FOR EUROPEAN AFFAIRS VEST PASSED
TO SWISS AMBASSADOR PROBST JULY 25 US RESPONSE TO SWISS
NOTE REQUESTING VIEWS ON UPCOMING CSCE EXPERTS MEETING
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ON PEACEFUL SETTLEMENT OF DISPUTES. US NOTE EXPRESSED
INTEREST IN WORKING AT MONTREUX MEETING ON PREPARATION OF
RECOMMENDATIONS FOR POSSIBLE WAYS TO COMPLEMENT EXISTING
METHODS OF RESOLVING JUSTICIABLE DISPUTES. IT EXPRESSED
DOUBT THAT USEFUL WORK COULD BE DONE ON NON-JUSTICIABLE
(POLITICAL) DISPUTES AND ADVOCATED THAT MEETING RETAIN
FORMAT ENVISAGED IN BELGRADE CONCLUDING DOCUMENT, NAMELY

SINGLE MEETING OF FROM FOUR TO SIX WEEKS THE REPORT OF WHICH WOULD THEN BE CONSIDERED BY MADRID MEETING IN 1980.

2. FOLLOWING IS TEXT OF US NOTE:

BEGIN TEXT: THE DEPARTMENT OF STATE ACKNOWLEDGES RECEIPT OF THE NOTE OF APRIL 20, 1978 FROM THE EMBASSY OF SWITZERLAND AND APPRECIATES THE CAREFUL CONSIDERATION GIVEN BY THE SWISS AUTHORITIES TO THE COMPLEXITIES OF ESTABLISHING A METHOD TO COMPLEMENT EXISTING METHODS FOR THE PEACEFUL SETTLEMENT OF DISPUTES.

IN THE DEPARTMENT'S VIEW, THE MEETING OF EXPERTS TO BE CONVENED AT MONTREUX ON OCTOBER 31, 1978 SHOULD, PURSUANT TO THE MANDATE IN THE CONCLUDING DOCUMENT OF THE BELGRADE MEETING, CONSIST OF ONE MEETING NOT TO EXCEED SIX WEEKS. FURTHER, AS EXPRESSLY PROVIDED IN THE BELGRADE DOCUMENT, THE EXPERTS SHOULD DRAW UP CONCLUSIONS AND RECOMMENDATIONS AND SEND THEIR REPORTS TO THE GOVERNMENTS OF THE PARTICIPATING STATES. THE RESULTS OF THE EXPERTS MEETING COULD THEN BE TAKEN INTO ACCOUNT, AS APPROPRIATE, AT THE MADRID MEETING.

WITH RESPECT TO THE EMBASSY'S REQUEST FOR THE VIEWS, OBSERVATIONS, OR PROPOSALS OF THE DEPARTMENT OF STATE REGARDING A METHOD FOR THE PEACEFUL SETTLEMENT OF
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DISPUTES, THE UNITED STATES GOVERNMENT SHARES THE EMBASSY'S VIEW THAT A NEW METHOD FOR THE PEACEFUL SETTLEMENT OF DISPUTES WOULD REPRESENT PROGRESS ONLY IF IT CONTAINED OBLIGATORY ELEMENTS. THE UNITED STATES GOVERNMENT BELIEVES THAT THE EXPERTS COULD MOST PROFITABLY CONCENTRATE ON THE DEVELOPMENT OF OBLIGATORY ARBITRAL PROCEDURES FOR THE SETTLEMENT OF SPECIFIED CATEGORIES OF JUSTICIABLE DISPUTES. THE UNITED STATES GOVERNMENT IS DOUBTFUL THAT USEFUL WORK COULD BE DONE AT THIS TIME ON ANY PROPOSAL INVOLVING OBLIGATORY ARBITRAL OR CONCILIATION PROCEDURES FOR THE SETTLEMENT OF NON-JUSTICIABLE DISPUTES OR OBLIGATORY CONCILIATION PROCEDURES FOR JUSTICIABLE DISPUTES. WITHIN THESE BROAD OUTLINES, THE UNITED STATES GOVERNMENT WOULD PREFER THAT THE EXPERTS SEEK AGREEMENT ON AN ENUMERATION OF CATEGORIES OF DISPUTES THAT WOULD BE ENCOMPASSED BY OBLIGATORY ARBITRATION PROCEDURES. IN THIS CONNECTION THE UNITED STATES GOVERNMENT COULD IN PRINCIPLE ENDORSE FROM AMONG THE EXAMPLES LISTED IN THE EMBASSY'S NOTE THE FOLLOWING: BORDER PROBLEMS, TRANSPORTATION RIGHTS, ENVIRONMENTAL PROBLEMS, DIPLOMATIC AND CONSULAR LAW, TREATMENT OF FOREIGNERS, INTERPRETATION AND APPLICATION OF TREATIES, VALIDITY,

ENTRY INTO FORCE AND TERMINATION OF TREATIES.

IN CONNECTION WITH SUCH OBLIGATORY ARBITRAL PROCEDURES,
THE UNITED STATES GOVERNMENT CONSIDERS THAT ANY NEW

ARBITRATION MACHINERY SHOULD NOT DETRACT FROM THE EXISTING
MACHINERY OF THE INTERNATIONAL COURT OF JUSTICE. IN THIS
RESPECT THE UNITED STATES WOULD PROPOSE THAT ANY NEW
PROCEDURE FOR COMPULSORY ARBITRATION BE MADE SUBORDINATE
TO A PRIOR TREATY OBLIGATION TO SUBMIT A DISPUTE TO THE
WORLD COURT OR TO THE INVOCATION OF THE JURISDICTION OF
THE COURT OVER A GIVEN DISPUTE.

FURTHER, IN REPLY TO THE EMBASSY'S NOTE, THE UNITED
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STATES COULD AGREE THAT THE EXPERTS MIGHT USEFULLY EXPLORE
THE ELABORATION OF A MODEL SETTLEMENT-OF-DISPUTES CLAUSE
FOR INCLUSION IN FUTURE TREATIES.

THE DEPARTMENT OF STATE WISHES TO REITERATE ITS APPRECIATION
OF THE EFFORTS OF THE SWISS GOVERNMENT TO UNDERTAKE
THE PREPARATORY WORK DESIGNED TO MAKE THE MONTREUX
MEETING A SUCCESS. IN THIS CONNECTION THE DEPARTMENT
WELCOMES FURTHER OPPORTUNITIES TO EXCHANGE VIEWS IN
ADVANCE OF THE EXPERTS MEETING AND TO COMMENT AT AN EARLY
DATE ON ANY WORKING DOCUMENT THAT THE SWISS FEDERAL
POLITICAL DEPARTMENT MAY PREPARE TO SERVE AS THE BASIS
FOR DISCUSSION AT THE MONTREUX MEETING.

END TEXT.

3. MR. VEST ADVISED AMBASSADOR THAT DR. DAVID FILVAROFF,
A PROFESSOR OF LAW AT THE UNIVERSITY OF TEXAS WHO SERVED
AS ADVISER ON US DELEGATION TO BELGRADE MEETING, WOULD
BE HEAD OF US DELEGATION AT MONTREUX.

4. AMBASSADOR PROBST SAID HE WOULD INFORM BERN THAT US
WAS NOT ABLE TO SUPPORT SWISS PROPOSAL THAT MEETING BE
DIVIDED INTO TWO HALVES. SWISS EMBASSY MINISTER MUHEIM
WHO WAS ALSO PRESENT AT MEETING ACKNOWLEDGED THAT AT ONE
STAGE SOME IN SWISS FOREIGN OFFICE HAD DESIRED TO TURN
MONTREUX INTO POLITICAL EVENT BUT THAT THIS VIEW HAD
BEEN REJECTED. SWISS STILL BELIEVED IT WOULD BE GOOD
IDEA, HOWEVER, FOR EXPERTS TO MEET TWICE BEFORE MADRID.
MR. VEST POINTED OUT THAT UNFORTUNATELY SOME CSCE
COUNTRIES ARE NOT AS RELIABLE AS OTHERS, THAT BELGRADE
FORMULA SPECIFYING SINGLE MEETINGS FOR EXPERTS ON EACH
OF THREE TOPICS (SCIENTIFIC FORUM, PEACEFUL SETTLEMENT,
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MEDITERRANEAN) HAD BEEN HARD FOUGHT AND THAT US WAS THEREFORE WARY OF PRECEDENT THAT MIGHT BE CREATED WERE THIS PATTERN TO BE CHANGED FOR MONTREUX MEETING.

5. MISSION MAY CIRCULATE COPY OF US NOTE AND BRIEF ALLIES ON ABOVE CONVERSATION. WE APPRECIATED RECEIVING COPIES OF BELGIAN AND DUTCH RESPONSES TO SWISS (REFAIR) AND WOULD BE INTERESTED IN LEARNING MORE OF WHAT OTHER ALLIES HAVE TOLD SWISS AND OF COMPOSITION OF ALLIED DELEGATIONS. AFTER ALLIES HAVE HAD OPPORTUNITY TO CONSIDER RESPONSES THAT HAVE THUS FAR BEEN MADE, WE WOULD WELCOME OPPORTUNITY TO ASCERTAIN WHETHER ALLIES WOULD CONSIDER IT USEFUL FOR EXPERTS TO CONSULT AT NATO PRIOR TO MEETING OR WHETHER IT WOULD BE SUFFICIENT TO CAUCUS IN MONTREUX ITSELF IMMEDIATELY PRIOR TO OPENING OF THAT MEETING. DEPARTMENT'S PREFERENCE WOULD BE FOR EXPERTS' MEETING IN BRUSSELS SO THAT MONTREUX DELEGATIONS MAY BE EXPOSED TO BROADER POLITICAL ASPECTS OF THEIR WORK. GIVEN RECENT DIFFICULTIES WITH CSCE CONSULTATIONS, WE WOULD APPRECIATE MISSION'S RECOMMENDATIONS ON BEST WAY TO RAISE POSSIBILITY OF SUCH A MEETING.

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